

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Marc Martel,)	Docket No. 1:17-cv-00407-SM
)	
Plaintiff,)	
)	
v.)	
)	
Computer Sciences Corporation,)	
)	
Defendant.)	
)	

PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO COMPEL

The Plaintiff, Marc Martel, by and through his attorneys, Upton and Hatfield, LLP, submits this Reply to the Opposition to Motion to Compel discovery of documents related to an investigation into an ethics complaint he made before he was terminated from his employment as follows:

1. In its Opposition, Computer Sciences Corporation (“CSC”) stated that it “can establish the defense cited by Plaintiff with evidence of its Equal Employment Opportunity Policy, Code of Business Conduct, employee acknowledgments, training practices, etc. CSC has not asserted or suggested that it is relying on advice of counsel in order to establish a good faith defense.” Doc. no. 25 ¶ 19.

2. As a result, CSC argues that “no implied waiver of the attorney-client privilege and/or work product protection with respect to the Report of Investigation has occurred and the Motion should be denied.” Doc. no. 25 ¶ 21.

3. While CSC has represented to the court that it will not use the material at issue to prove its affirmative defense, CSC may argue that it should be permitted use the material to rebut Mr. Martel’s testimony. At trial, Mr. Martel may testify that he made an ethics complaint and

that CSC investigated the claim, but that the specific findings were never shared with him. Mr. Martel is concerned that CSC will argue that Mr. Martel has “opened the door” to introducing the requested, but undisclosed material at trial.

4. CSC should not be permitted to maintain its claims of privilege during discovery, only to waive it at trial, and thus use the requested material as both a sword and a shield. *See Walker v. N.H. Admin. Office of the Courts*, 2013 U.S. Dist. LEXIS 24506, *15 (D.N.H. Feb. 22, 2013) (“[i]mplied waivers may be found where a party seeks to use the privilege as both a sword and shield”).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Grant Plaintiff’s Motion to Compel; and
- B. Grant such other and further relief as may be equitable and just.

Respectfully submitted,

MARC MARTEL, Plaintiff

By His Attorneys

UPTON & HATFIELD, LLP

Date: February 1, 2019

By: /s/ Lauren S. Irwin
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic filing upon counsel of record for Defendant.

Date: February 1, 2019

/s/ Lauren S. Irwin
Lauren S. Irwin